



THE BERNHOFT LAW FIRM, S.C.

The Honorable Lewis A. Kaplan
United States District Judge
Southern District of New York
500 Pearl Street, Courtroom 21B
New York, New York 10007
(212) 805-0104 Deputy
(212) 805-0216 Chambers

November 8, 2023

Via ECF and Hand Delivery

**Re: *United States v. Zeitlin*, 23-Cr-419 (LAK)
Joint Request for Briefing Schedule Regarding Filter Team Issues**

To the Honorable Judge Kaplan:

Defendant Richard Zeitlin, through undersigned counsel, respectfully submits this letter to request a briefing schedule on issues related to a defense privilege list and government filter team. The government agrees this court's intervention is necessary and concurs with the request for a briefing schedule and the briefing dates proposed herein.

Background

Pursuant to a warrant, Mr. Zeitlin understands agents of the government intend to search twenty-nine electronic devices seized in Las Vegas on or about August 17, 2023. At the outset, the government intends to employ a "filter team" to review the material for potentially privileged communications.

Several weeks ago, AUSA Jane Kim, a member of the prosecution team in this case, asked if our firm would like to provide a list of persons with whom Mr. Zeitlin had privileged, confidential, or otherwise protected communications so that the "filter team", headed by AUSA Molly Canick, would have the benefit of that information for purposes of her filter team's work identifying and segregating privileged communications. We responded on October 5, 2023, and provided such a "privilege list" by email solely to AUSA Canick, as head of the filter team. We cautioned that the privilege list should not be shared with the prosecution team.

We later learned from AUSA Kim that her prosecution team intended to review the privilege list we provided to AUSA Canick. We objected, and further discussions ensued. Ultimately, undersigned counsel sent letters to AUSAs Kim and Canick, respectively, on October 31, 2023. AUSA Kim responded on November 3, 2023, and I replied on November 8, 2023. (We do not have a record of receiving any substantive response directly from AUSA Canick, although she did acknowledge receipt of our letter to her).

These discussions have revealed two essential disputes.¹ Despite the parties' mutual best efforts, the disputes remain unresolved.

First, we have taken the position that the prosecution team should not review our firm's privilege list, because at minimum, this would compromise the perception of a fair and independent filter process. We also expressed concern about the filter team providing a detailed "privilege log" to the prosecution team. Meanwhile, the government has taken the position that our firm's list is not privileged, and therefore the prosecution team may properly review and confer about the list with the filter team.

Second, we requested specific information about the filter team's membership and protocols. For instance, we asked who comprises the filter team and in what offices they are stationed, and we asked when (if ever) we would have opportunities to assert claims of privilege during the process. In making these requests, we stated our belief that any defense objection to the filter process might be waived if not raised at the outset. In response, the government took the position that a defendant is not legally entitled to disclosure of a filter team's processes and procedures. The government provided some general information about the use of filter teams in this District, reiterating that Ms. Canick is a member of this particular filter team. The government did not provide further specific details.

Earlier today, November 8, 2023, the undersigned spoke with AUSA Kim by telephone, and per that discussion the parties agree this Court's intervention will be necessary to resolve these issues. As set out in particular below, the parties further agree this Court should set down a briefing schedule to facilitate a timely resolution of this controversy. Meanwhile, the government will postpone the filter review process pending this Court's decision.

Request for Briefing Schedule

Accordingly, Mr. Zeitlin respectfully requests a briefing schedule for this Court to resolve the disputes outlined above, as follows:

- Defendant Zeitlin's motion due on or before **Tuesday, November 14, 2023**;
- The Government's response due on or before **Monday, November 20, 2023**; and
- Any reply by Defendant Zeitlin due on or before **Wednesday, November 22, 2023**.

¹ The summaries in this letter are not intended to be exhaustive or to foreclose Mr. Zeitlin or the government from raising additional associated issues or arguments in subsequent briefing to this Court.

Respectfully submitted,

THE BERNHOFT LAW FIRM, S.C.
Attorneys for Defendant Richard Zeitlin



Robert G. Bernhoft, Esq.
Appearing *pro hac vice*
1402 E. Cesar Chavez Street
Austin, Texas 78702
Telephone: (512) 582-2100
Facsimile: (512) 373-3159
rgbernhof@bernhoflaw.com

cc: All counsel of record (via ECF)